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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6379 OF 2006
AND
WRIT PETITION NO. 6382 OF 2006

M/s. Sheela J. Nagori

& Ors. Petitioners.

VS.

Ashokkumar N. Saraf

& Ors. Respondents.

Mr. Hitesh Jain i/by A.L.M.T. Legal

for petitioners.

Mr. S.M. Gorwadkar for Respondents.

CORAM : A.P. DESHPANDE, J.

DATE : 24th November, 2006.

P.C.

. The petitioner in both these petitions is original defendant whereas the respondents are the plaintiffs. The plaintiffs have categorically pleaded in the plaint and to be more precise in para 9 thereof that in the year 1993 the defendants have made permanent construction and illegal alteration in the suit shop premises without permission of the landlord. Therefore, late Nagindas Gokuldas Saraf,

the owner of the said property, informed the Court Receiver, about the said un-authorized construction work on 20/11/1993. With a view to substantiate the fact of unauthorised construction and illegal alterations, the plaintiffs filed an affidavit in examination-in-chief of one of its witnesses, who in addition to the said averments also deposed that the Corporation had demolished the illegal construction and alterations made by the defendants. That part of the examination-in-chief was objected to by the defendants by contending that to the extent the affidavit relates to the acts of demolishing illegal construction by the Corporation, the same is not pleaded. On this premise, two applications came to be filed (1) for seeking an amendment of the written statement, which is subject matter in writ petition no. 6379 of 2006 whereas the other application is the subject matter of writ petition no. 6382 of 2006 wherein a prayer is made for expunging that part of the examination-in-chief. The trial Court has rejected both the applications and aggrieved thereby the present writ petitions are filed.

2. A perusal of the plaint clearly reveals that the factum of illegal construction / alteration done in 1993 by the defendants was very much pleaded. However, the steps taken by the Corporation consequent upon a complaint made by the plaintiffs has not been pleaded. The action taken by the

Corporation seems to have been deposed for the first time in the examination-in-chief. With a view to meet the ends of justice the defendants petitioners needs to be permitted to cross-examine the said witness touching the said issue and also need to be granted permission to lead evidence touching the issue of action taken by the Corporation in regard to the illegal structure. This would subserve the ends of justice and avoid miscarriage of justice.

3. The learned counsel for the respondents in all fairness does not dispute the fact that the action taken by the Corporation with regard to demolition is not pleaded in the plaint but it is just the consequence of the illegal construction carried out by the defendants which is the subject matter of the suit. In all fairness, the counsel for the respondents does not object to permitting the defendants to cross-examine the witness touching the aspect of demolition of the structure by the Corporation, so also he does not object to the petitioners/defendants being permitted to lead evidence touching the action taken by the Corporation in demolishing the illegal structure and alterations.

4. In this view of the matter, both the writ petitions are partly allowed. Though no interference is called for with the order impugned

in these petitions, it is made clear that the trial court shall make available the concerned witness for cross-examination by the petitioners/defendants touching the aspect of action of demolition taken by the Corporation in regard to the alleged illegal construction so also the trial court shall permit the petitioners to lead evidence touching this aspect of the matter.

5. Rule is made absolute in the above terms.
No order as to costs.

(A.P. Deshpande, J.)